

**DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION PROGRAMS  
Milbank School District  
Accountability Review - Focus Monitoring Report 2008-2009**

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**Dates of On Site Visit:** November 20<sup>th</sup>, 2008

**Date of Report:** December 22, 2008

3 month update due: March 22, 2009

6 month update due: June 22, 2009

9 month update due: September 22, 2009

Closed:

Date Received:

Date Received:

Date Received:

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**Program monitoring and evaluation.**

In conjunction with its general supervisory responsibility under the Individuals with Disabilities Education Act, Part B, Special Education Programs (SEP) of the Office of Educational Services and Support shall monitor agencies, institutions, and organizations responsible for carrying out special education programs in the state, including any obligations imposed on those agencies, institutions, and organizations. The department shall ensure:

(1) That the requirements of this article are carried out;

(2) That each educational program for children with disabilities administered within the state, including each program administered by any other state or local agency, but not including elementary schools and secondary schools for Native American children operated or funded by the Secretary of the Interior:

(a) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the department; and

(b) Meets the educational standards of the state education agency, including the requirements of this article; and

(3) In carrying out this article with respect to homeless children, the requirements of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2007, are met. (Reference- ARSD 24:05:20:18.)

**State monitoring--Quantifiable indicators and priority areas.**

The department shall monitor school districts using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of Free Appropriate Public Education (FAPE) in the least restrictive environment;

(2) Department exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in this article and article 24:14; and

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. (Reference-ARSD 24:05:20:18:02.)

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**State enforcement -- Determinations.**

On an annual basis, based on local district performance data, information obtained through monitoring visits, and other information available, the department shall determine whether each school district meets the requirements and purposes of Part B of the IDEA...

Based upon the information obtained through monitoring visits, and any other public information made available, Special Education Programs of the Office of Educational Services and Support determines if the agency, institution, or organization responsible for carrying out special education programs in the state:

- Meets the requirements and purposes of Part B of the Act;
- Needs assistance in implementing the requirements of Part B of the Act'
- Needs intervention in implementing the requirements of Part B of the Act; or
- Needs substantial intervention in implementing the requirements of Part B of the Act. (Reference-ARSD 24:05:20:23.04.)

#### **Deficiency correction procedures.**

The department shall require local education agencies to correct deficiencies in program operations that are identified through monitoring as soon as possible, but not later than one year from written identification of the deficiency. The department shall order agencies to take corrective actions and to submit a plan for achieving and documenting full compliance. (Reference-ARSD 24:05:20:20.)

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## **1. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003.**

### **ARSD 24:05:25:0 Criteria for determining the existence of a learning disability**

The individual education planning (IEP) team may determine that a student is a student with a learning disability when the child's evaluation results display a severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, or mathematics reasoning.

Through a student file review and interviews with district staff, the monitoring team determined there is a child, who was identified in April 2003, as a student with a learning disability, who does not have a severe discrepancy between their achievement and intellectual ability. In addition the student's IEP team did not take in to consideration the significant behavior indicators reported in the student's evaluation report. The IEP team marked on the IEP that the student's general education behavior was not impeding learning.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

#### **Finding:**

Through a review of student records for students identified as having a specific learning disability, the monitoring team determined the evaluation data supported eligibility.

**Corrective Action: None**

## **2. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003.)**

### **ARSD 24:05:25:04 Evaluation procedures**

The district is required to ensure that a variety of assessment tools and strategies are used to gather relevant functional and development information about the child.

Through a review of sixteen student files, the monitoring team found the district staff did not consistently include functional information in the evaluation process. Although functional assessment was frequently completed, only grade equivalent scores were listed in the report.

The information was not analyzed and a written summary of strengths and needs were not developed for specific skill areas affected by the student's disability. The student's present level of academic performance, their progress in the general curriculum or development of annual goals and short-term instructional objectives therefore did not link to evaluation.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

**Finding:**

Under the heading of "functional assessment" on the infinite campus report form, the district listed a variety of tests administered such as STAR, Successmaker, Test of Reading Comprehension, Test of Written Language, Oral and Written Language Scale etc. At times scores from these evaluations were used for the purpose of determining eligibility, therefore cannot be used for functional assessment. The report information documented from these evaluations typically included scores rather than specific skill based information in the student's areas of disability which is needed to develop the students program. For students of transition age, the evaluation report information was a list of what the student needed to do rather than skills the student needed to learn for post school success.

<b>Corrective Action:</b> Document the specific activities and procedures that will be implemented and the data/criteria that will be used to verify compliance.	<b>Timeline for Completion</b>	<b>Person(s) Responsible</b>	<b>(SEP Use Only) Date Met</b>
<p><b>Activity/Procedure:</b> The district will review its policy, procedure and practice regarding evaluation used for the purpose of determining eligibility and what will be used for functional assessment. The districts functional assessment report will include a list of specific skills the student has and a list of specific skills the student will need to learn for each skill area affected by the disability including transition.</p> <p><b>Data Collection:</b> The district will receive technical assistance regarding this issue and the date, provider and participants will be reported as part of the progress report.</p> <p>Each special education teacher and speech pathologist will submit a copy of:</p> <ol style="list-style-type: none"> <li>1. the prior notice/consent for evaluation</li> <li>2. copies of <b><u>all</u></b> the evaluation reports including functional,</li> <li>3. a copy of the prior notice for the eligibility/IEP meeting, and;</li> <li>4. a copy of the IEP for <u>one student who has been initially evaluated or reevaluated</u> during the progress reporting period.</li> </ol>	<p>March 15, 2009</p>	<p>Special Education Director and staff</p>	

**3 month Progress Report:**

**6 month Progress Report:**

**9 month Progress Report:**

### **3. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003.**

#### **ARSD 24:05:27:01.03 Content of individualized education program (IEP)**

##### **Present level of performance**

A student's IEP must contain present levels of performance based upon the skill areas affected by the student's identified disability. The present levels of performance are based upon the functional assessment information gathered during the comprehensive evaluation process. In the majority of the files reviewed, present levels of performance did not address specific skill area(s) affected by the student's disability, to include strengths, needs or their involvement in the general curriculum and parental input. An example of a student's present level of performance reflected only test scores and a summary of the evaluations completed for that student. The present level of performance did not specify the skill area(s) affected by the student's disability, nor did it include strengths, needs or their involvement in the general curriculum and parental input.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

##### **Finding:**

Through a review of student records the monitoring team determined the present levels of academic achievement and functional performance did not consistently contain the skill areas affected by the student disability to include the strengths, needs and involvement or progress in the general curriculum. The lack of functional assessment resulted in no link to evaluation. The present levels for students of transition age did not represent specific skill the student needed to learn for post school success.

<b>Corrective Action:</b> Document the specific activities and procedures that will be implemented and the data/criteria that will be used to verify compliance.	<b>Timeline for Completion</b>	<b>Person(s) Responsible</b>	<b>(SEP Use Only) Date Met</b>
<b>Activity/Procedure:</b> The district will review its policy, procedure and practice regarding evaluation used for functional assessment and how the skill based information is documented in student present levels of academic achievement and functional performance (PLAAFP). The districts PLAAFPs will include a list of specific skills (strengths) the student has and a list of specific skills the student needs/weaknesses for each skill area affected by the disability including transition. <b>Data Collection:</b> The district will receive technical assistance regarding this issue and the date, provider and participants will be reported as part of the progress report.  Documentation submitted for General Supervision #2 will be used to verify correction to this issue.	March 15, 2009	Special Education Director and staff	

**3 month Progress Report:**

**6 month Progress Report:**

**9 month Progress Report:**

#### **4. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003. ARSD 24:05:25:26 Extended school year**

Administrative rules state that the district will provide extended school year (ESY) services to eligible children if the IEP team determines on an individual basis that such services are necessary for the provision of a free appropriate public education. When services are appropriate, an IEP team needs to specify goals and objectives to be addressed, determine the length of the school day, duration, determine the type(s) of service, state the amount of service needed and obtain parental consent.

In seven student files, the IEP indicated extended school year was needed or was to be determined at a later date, but there was no documentation to support that extended school year was addressed. Interviews with staff and parents indicated ESY services do occur in the district, however; the documentation completed to support the provision of services was not placed in the student files, nor could it be located elsewhere.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

**Finding:**

Through a review of student records, the monitoring team determined the district documented ESY services for students.

**Corrective Action: None**

#### **5. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003. ARSD 24:05:27:01.02 Development, review, and revision of individualized education program**

**Consideration for special factors**

In developing, reviewing, and revising each student's individualized education program, the team must consider, in the case of a student whose behavior impedes his or her learning or that of others, strategies, including positive behavioral interventions, strategies, and supports, to address that behavior.

In four student files reviewed, the behavioral assessment report and/or present levels of performance contained information regarding the impact of student behavior on their educational performance. In developing the IEPs for these students, the team checked "no", indicating the behavior does not impede learning. As a result, the IEP team did not address strategies, including positive behavioral interventions and supports to address the behaviors. Interviews with special education teachers revealed a lack of understanding regarding this requirement and how they were to address this section of the IEP.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

**Finding:**

Through a review of student records the monitoring team determined student IEP teams did not take in to consideration the significant behavior indicators identified through referral, informal review or evaluation report. The IEP team marked on the IEP that the student's general education behavior was not impeding learning. Behaviors identified as specific student concerns

did not consistently result in the development of behavioral interventions, strategies and supports to address the behavior.

<b>Corrective Action:</b> Document the specific activities and procedures that will be implemented and the data/criteria that will be used to verify compliance.	<b>Timeline for Completion</b>	<b>Person(s) Responsible</b>	<b>(SEP Use Only) Date Met</b>
<p><b>Activity/Procedure:</b> The district will address a students behavior issues by developing positive behavioral interventions, strategies and supports to address the behavior.</p> <p><b>Data Collection:</b> The district will receive technical assistance regarding this issue and the date, provider and participants will be reported as part of the progress report.</p> <p>The district will submit three IEPs written during the progress reporting period that the team determined the student's behavior impedes his or her learning or that of others and developed behavioral interventions, strategies and supports to address the behavior.</p>	March 15, 2009	Special Education Director and staff	

**3 month Progress Report:**

**6 month Progress Report:**

**9 month Progress Report:**

## **6. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003.**

### **ARSD 24:05:27:13 Modifications to regular vocational program**

#### **ARSD 24:05:27:13.02 Transition services**

Administrative rules state that transition planning must begin at age 14, with transition services beginning at age 16 or earlier if appropriate. Students need to be fully involved in the planning process, taking into account student preferences and interests. The review team completed a file review of ten students who are age fourteen and older. The transition portion of the IEP did not provide for an outcome orientated plan designed to assist students in moving out of school into appropriate post-secondary settings. The plans seen by the review team typically identified employment and living outcomes that were not student oriented. For example: Employment: "We expect that \_\_\_ will be employable after experience in job shadowing and supervised training", Living: "\_\_\_ is capable of living independently". In addition, the plans lacked appropriate linkages in goals and services to attempt to meet stated outcomes and person/agency responsible to carry out the services were not identified.

**State Performance Plan Indicator 13:** Percent of your age 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

**Finding:**

Through a review of nine student records, the monitoring team determined four did not meeting the criteria in the indicator 13 checklist. Areas of concern include the need to inviting outside agencies that may be providing or paying for post secondary service, course of study and post secondary goals need to be measurable and written to reflect future outcomes for the student.

<b>Corrective Action:</b> Document the specific activities and procedures that will be implemented and the data/criteria that will be used to verify compliance.	<b>Timeline for Completion</b>	<b>Person(s) Responsible</b>	<b>(SEP Use Only) Date Met</b>
<p><b>Activity/Procedure:</b> The district will develop IEPs linked to evaluation that provide an outcome orientated plan designed to assist students in moving out of school into appropriate post-secondary settings.</p> <p><b>Data Collection:</b> The district will receive technical assistance regarding this issue and the date, provider and participants will be reported as part of the progress report.</p> <p>Each special education teacher who writes transition plans will submit a copy of:</p> <ol style="list-style-type: none"> <li>1. the prior notice/consent for evaluation</li> <li>2. copies of <u>all</u> the evaluation reports including functional,</li> <li>3. a copy of the prior notice for the eligibility/IEP meeting, and;</li> <li>4. a copy of the IEP for <u>one student who has been reevaluated</u> during the progress reporting period.</li> </ol>	March 15, 2009	Special Education Director and Staff	

**3 month Progress Report:**

**6 month Progress Report:**

**9 month Progress Report:**

## **7. GENERAL SUPERVISION**

**Present levels: (Statement of present levels of academic achievement and functional performance that resulted in area of non-compliance from report of November 11 & 12, 2003**

**ARSD 24:05:27:01.03 Content of individualized education program**

**ARSD 24:05:30:16.01 Transfer of parental rights**

The student and their parents must be informed of the transfer of parental rights one year prior to the student turning 18. In a review of three student files, the review team noted students were informed of the transfer within shorter timeframes. Example: providing notice to a student on 11/27/02 and the student turned eighteen on 7/28/03.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

**Finding:**

Through a review of student records, the monitoring team determined that transfer of rights is occurring one year prior the student turning 18 years old.

**Corrective Action: None**

## **8. GENERAL SUPERVISION**

**State Performance Plan - Indicator 3:** Participation and performance of children with disabilities on statewide assessments.

1. Percent of districts meeting State's AYP objectives for progress for disability subgroup.
2. Participation rate for children with IEPs in a regular assessment with not accommodations; regular assessment with accommodations; alternate assessment against grade level standards; alternate assessment against alternate achievement standards.
3. Proficiency rate for children with IEPs against grade level standards and alternate achievement standards.

**Finding: On-site November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

Through a review of 14 student files, data gathered by the review team determined the accommodations provided for State/District wide assessments:

- Were not consistently appropriate for the skill area affected by the disability,
- Were not consistently provided in the student's instructional program; and
- Accommodations identified in the IEPs for State/District wide assessment were not consistently used during the assessment administration.

<b>Corrective Action:</b> Document the specific activities and procedures that will be implemented and the data/criteria that will be used to verify compliance.	<b>Timeline for Completion</b>	<b>Person(s) Responsible</b>	<b>(SEP Use Only) Date Met</b>
<p><b>Activity/Procedure:</b></p> <ol style="list-style-type: none"><li>1. The district will review current policy/procedure to determine why discrepancies are occurring.</li><li>2. Develop a process that will allow for the appropriate documentation and provision of accommodations for state/district assessments.</li><li>3. Train IEP staff and testing coordinator in the procedures/process.</li><li>4. Implement procedures and collect data to verify accommodation are appropriately documented and provided during state/district assessments.</li><li>5. Analyze data collected to determine if procedures corrected discrepancy. Repeat steps 1 through 5 if discrepancies continue.</li></ol> <p><b>Data Collection:</b></p> <p>The district will collect and submit to SEP the following data:</p> <ol style="list-style-type: none"><li>1. Written description of the districts review process to identify why the discrepancies are occurring.</li><li>2. Written description of the process the district will implement to correct the discrepancies.</li><li>3. Training documentation to include the date staff training occurred, name of individual who provided the training and sign-in sheet with the name of all participants/position titles, who attended the training.</li></ol>	March 15, 2009	Special Education Director and Staff & Testing Coordinator	

**3 month Progress Report:**



**6 month Progress Report:**

**9 month Progress Report:**

## **9. GENERAL SUPERVISION**

### **State Performance Plan – Indicator 16: Complaint Procedures**

#### **Findings: December 11, 2007**

Federal Regulation § 300.324 (a)(4)(ii) states that if changes are made to the child's IEP in accordance with the regulations of developing, reviewing and revising the IEP, the public agency (the school district in this case) must ensure that the child's IEP Team is informed of those changes. ARSD 24:05:27:08.01 states that in making changes to a student's IEP after the annual IEP meeting for a school year, the parent of a student with a disability and the school district may agree not to convene an IEP meeting for the purposes of making the changes, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP in accordance with this section, the district shall ensure that the student's IEP team is informed of the changes.

Federal Regulation § 300.324 (a)(6) and ARSD 24:05:27:08.02 state that changes to the IEP may be made either by the entire IEP Team at an IEP meeting, or the parents and the district may agree to changes that will not require a meeting of the entire team. Either method of changes to the IEP requires a written document of those changes. The provision also allows for amendments to be made to the current IEP rather than redrafting the entire IEP document. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

**ARSD 24:05:25:23.** further states that all decisions of the IEP team shall be made jointly by the parents and school personnel through the IEP process and specified on the child's IEP. An IEP must be in effect before special education and related services are provided to a child and must be implemented as soon as possible following a placement committee meeting.

The school district did not make changes to the actual IEP document, but did make changes from the 9/10/07 agreed upon 9 hours per week of service to be provided by the Human Services Agency, when it developed an agreement with that agency to provide 6 hours per week of service for the student. This changed the intent and stated decision of the IEP team. Both copies of the IEP were provided to the parent, and both clearly stated the 9 hours per week of services for independent living skills development.

#### **Corrective Action Required:**

Milbank School District shall fulfill their required corrective action by completing the following:

- The district shall provide 27 hours of compensatory education specifically in the area of independent living skill training.
- The IEP team shall reconvene within 15 calendar days to determine specifically how those 27 hours will be provided and for which types of skills, based on student's needs. The plan should spell out the timeline to complete compensatory education.
- In addition, the Milbank School District shall provide professional development to all special education staff and school administrators on the rules and regulations governing how to make changes and amendments to IEPs.

**Follow-up: November 20<sup>th</sup> & 21<sup>st</sup>, 2008**

**Finding:**

Through a review of four student records, the monitoring team determined prior notice was provided prior to amending IEPs, parents participated in the decision making process and meeting notes documented the change agreed upon by the team.

Regarding the specific complaint, the student record contained evidence of the meeting held to determine the 27 hours of compensatory education would be provided and training regarding how to make changes/amending the IEP.

**Corrective Action: None**